

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:16-cr-026

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

ROBERT JONES,

Defendant.

:

DECISION AND ORDER

This case is before the Court on Motions of Defendant Robert Jones captioned (1) Defendant's *pro se* Motion for a copy/CD of any and all trial discovery records (ECF No. 123); (2) Motion to Preserve, Protect, and Secure any and all physical electronic, tangible, or forensic evidence and any expert analysis or examination findings thereto, as well as any and all trial and defense records in this entitled case (ECF No. 124); (3) Motion to Compel United States Attorney to produce specific (any and all) records written, electronic, e-mail, text and any contemporaneous notes as to any plea negotiations, terms, or offers between the government & defense counsel (ECF No. 125)), and (4) Defendant's *Ex Parte* Motion to Order Third Party Defense Expert to secure, maintain, protect, and to (produce a copy or copies) of any and all expert analysis &

communications written, electronic, text or email between expert and trial counsel (without advance notice) to former trial counsel (ECF No. 126).

Because these Motions are in relation to an intended motion to vacate under 28 U.S.C. § 2255, they are referred to the undersigned pursuant to General Order No. 13-1.

Analysis

The above-captioned criminal case is not currently “pending.” Defendant Jones was sentenced on July 26, 2018 (Minutes, ECF No. 101; Judgment, ECF No. 102). He appealed to the United States Court of Appeals for the Sixth Circuit which affirmed his conviction and sentence. *United States v. Jones*, Case No. 18-3743, 2019 U.S. App. LEXIS 19503, 2019 WL 3764628 (6th Cir. Jun. 27, 2019)(copy at ECF No. 121). His conviction became final on September 25, 2019, when his time to petition the Supreme Court of the United States for review expired. *Sanchez-Castellano v. United States*, 358 F.3d 424, 426–27 (6th Cir. 2004); accord *Raybon v. United States*, 867 F.3d 625, 629 (6th Cir. 2017). Under 28 U.S.C. § 2255(f), he has until September 25, 2020, to file a motion to vacate under 28 U.S.C. § 2255 but he has not yet done so. Until he does so, he is not a party to a pending case and thus does not have any of the privileges or rights that attach to party status, including in particular rights to discovery or in aid of discovery.

Defendant represents he needs the discovery to prepare to file his § 2255 motion. However, the Rules Governing § 2255 Motions do not provide for pre-filing discovery. Nor does the Court even have jurisdiction over the third-party expert, Tamie Loehrs, whose address is given as Phoenix, Arizona.

As a member of the public, Defendant has a right of access to all public court documents in the case; copies can be obtained from the Clerk by paying \$0.50 per page¹ in advance.

Defendant cites no authority for filing one of these Motions *ex parte*. Generally, matters may not be filed *ex parte* without the prior permission of the Court and the reasons given in the Motion would not be sufficient to support *ex parte* filing.

Based on the foregoing reasons, all four of the pending Motions (ECF No. 123, 124, 125, and 126) are DENIED.

January 16, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge

¹ This price is set by the Judicial Conference of the United States and not by this Court.